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Michael P. Malloy
Office of the Comptroller of the Currency, U.S. Department of the Treasury

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The Impact of U.S. Control of Foreign Assets on Refugees and Expatriates

Michael P. Malloy*

INTRODUCTION

The U.S. Treasury Department has the responsibility of administering several emergency-related programs that affect the property of certain countries (and usually the nationals thereof) designated by its regulations, where the property, or the persons dealing with the property, are subject to the jurisdiction of the United States. These so-called "embargo controls" consist of trade sanctions (*i.e.*, an "embargo" in the narrow sense of the term) and prohibitions on transactions involving assets in which the designated country or its nationals have any interest. These prohibitions, known collectively as a "blocking" of assets, have an impact on refugees and expatriates, usually taking one or more of the following forms: (1) blocking of U.S. assets in which such individuals have a direct interest, until they have established residence outside the blocked country; (2) indefinite blocking of U.S. assets of business entities in which they have an interest; (3) blocking of certain U.S. assets in which they would normally assert a right as heirs or legatees; and (4) prohibiting use of blocked assets of their country of origin to satisfy their claims against that country. This article examines U.S. control of foreign assets in light of the consequences for refugees and expatriates.

Three sets of such controls arise under the Trading With the Enemy Act.[1] The Foreign Assets Control Regulations[2] cover transactions involving property in which North Korea, Vietnam, or Cambodia, or any national

* Attorney-Adviser (Finance), Securities Disclosure Division, Office of the Comptroller of the Currency, U.S. Department of the Treasury. Formerly Attorney-Adviser, Office of Foreign Assets Control, U.S. Department of the Treasury (1977-1980); research associate, Institute of International Law and Economic Development, Washington, D.C. (1976-1977). B.A., Georgetown University (1973); J.D., University of Pennsylvania (1976). The views expressed in this article are those of the author alone and do not necessarily reflect the position of the Department of the Treasury or any office or agency thereof.

thereof, has had any interest since the relevant effective date with respect to each designated country.[3] These regulations were issued after President Truman's 1950 proclamation of a national emergency in connection with the Korean conflict.[4] (At that time the regulations designated only the People's Republic of China (PRC) and North Korea. The controls with respect to the PRC were substantially cut back in May 1971,[5] and finally lifted on January 31, 1980.[6])

In essence, the regulations constitute a virtually complete trade and financial embargo of these countries for all purposes. The basic provision is paragraph (b) of section 500.201 of the regulations.[7] For present purposes, it may be paraphrased as follows: persons subject to U.S. jurisdiction are prohibited, unless licensed by Treasury, from engaging in any transaction or transfer with respect to any property in which any designated country or its nationals have any interest of any nature whatsoever.

The key terms here are "transfer,"[8] "property,"[9] and "interest"[10] in property of the designated country or national. The scope of these terms as interpreted by the courts is broad enough to make illegal any direct or indirect transaction involving anything of value, between a person subject to U.S. jurisdiction and a designated country or national. This broad scope has resulted in the proscription of such transactions as the importation of goods of designated-country origin, even where title had already passed to a third-country national,[11] the passage of title to property of deceased designated-country nationals by intestate succession,[12] and the transfer of a gift intended for a designated country for humanitarian purposes.[13] Of course, the major effect of the prohibition remains the "blocking" of property in which there is an interest of a designated country or its nationals;[14] that is, no transaction involving property subject to the regulations can occur without a Treasury license.

The provisions of the Cuban Assets Control Regulations[15] are virtually identical to those of the Foreign Assets Control Regulations. The same prohibitory language appears in paragraph (b) of section 515.201, with similar scope and effect. However, as will be seen in the discussion that follows, licensing policy with respect to Cuba has been more flexible.[16]

The Foreign Funds Control Regulations[17] as they now stand are a vestige of the World War II program administered by the Foreign Funds Control, the predecessor to the present Office of Foreign Assets Control (OFAC) which administers all of these Treasury programs. At the height of World War II, the Control had blocked virtually the entire world, bringing approximately $7 billion worth of blocked assets under the control of the regulations.[18] Currently, these regulations apply only to small amounts of blocked assets belonging to Czechoslovakia, East Germany, Latvia, Lithuania, and Estonia. This program is not directly relevant to the concerns of this article, although the program and the cases interpreting

it are often pertinent to an understanding of the concepts and purposes of the other, more active programs administered by Treasury.

The Iranian Assets Control Regulations [19] arose under a new emergency statute, the International Emergency Economic Powers Act. [20] These Regulations originally prohibited a wide range of commercial and financial transactions involving the Government of Iran, entities controlled by the government, and (to a more limited extent) individual Iranian nationals. However, the blocking imposed by these Regulations is limited to the assets of the government and its controlled entities. Hence, the impact of these Regulations on Iranian refugees and expatriates is negligible.

One example should bring the impact of the Treasury controls upon refugees into focus. Mr. *A*, a national of a foreign country, has a bank account in the United States, and he is the majority stockholder of a corporation which also has property in the United States. Mr. *A*'s home country is one with which the United States is beginning to experience foreign policy difficulties. Eventually, the foreign country expropriates or nationalizes all assets in which U.S. nationals have an interest. Relations between the two countries worsen, and the United States takes steps to block the assets of that foreign country and its nationals. Hence, no transactions involving any of this property may occur without a license from Treasury.

The initial effect of all this on Mr. *A* is devastating. His account is blocked; the U.S. assets of his corporation suffer under the same prohibition. While he remains in his home country, he cannot make any valid transfer of any of these assets. If Mr. *A*, whose politics are out of favor at home, flees the country and makes his way to the United States, he will probably be able to use his own account, [21] but not that of his corporation. [22] Mr. *A*'s situation is typical, but there are other variations on his story which will suggest themselves as the impact of blocking on individuals who become refugees or expatriates is examined.

UNBLOCKING THE ASSETS OF INDIVIDUALS

Unblocking the assets of individuals is a genuine issue only in the context of the Foreign Assets and the Cuban Assets Control Regulations. The assets of individuals are not blocked under the Iranian Assets Control Regulations, [23] and there is no practical issue with respect to the vestigial blocking of World War II assets.

The blocking provisions of both the Foreign Assets and Cuban Assets Control Regulations apply to assets in which there is an interest of either the designated foreign country or any national thereof. [24] The term "national," or more particularly "designated national," is an extremely broad

one, encompassing even individuals who would not normally be considered nationals of the designated country as a matter of general principles of international law.[25] For example, by definition, the term "designated national" would include not only a citizen or national of the designated country, but also anyone who was domiciled or resident within the designated country on or after the pertinent effective date, or who had been acting for or on behalf of the designated country itself.[26] Hence, it is likely that most individuals who eventually become refugees would be, by definition, designated nationals. That being the case, any assets subject to the jurisdiction of the United States in which they have an interest would be blocked.

The policy issue, then, is what to do about these individuals once they have left the designated country and have effectively severed their ties with it. The licensing provisions which deal with the blocked property of individuals attempt to take into account, to the extent consistent with the purposes of the regulations, the movement of individuals after the effective date. The "license" which would be issued by the OFAC is a written authorization permitting a transaction or type of transaction that would otherwise be prohibited by the regulations. A transaction may be authorized either by a "general license," which is a provision in the regulations authorizing by its own terms a described type of transaction, or by a "specific license," for which an application would have to be made with OFAC for review on a case-by-case basis.[27]

For the most part, the provisions of the Foreign Assets and Cuban Assets Control Regulations are parallel on these issues. Under the Foreign Assets Control Regulations, any person in the United States, regardless of citizenship or nationality, is generally considered an unblocked national, with unrestricted access to his or her property. However, anyone who on or since the effective date has been in the designated country, or has acted or purported to act for that country, is not unblocked by this general license. Such an individual must proceed by way of a specific license application.[28] If, on the other hand, an individual is paroled into the United States pursuant to the Immigration and Nationality Act at any time, he or she is also considered an unblocked national under the Foreign Assets Control Regulations.[29] This general license does not apply to an individual who has acted or purported to act for or on behalf of any designated country. Under the Cuban Assets Control Regulations, any individual physically resident in and within the United States is unblocked unless he or she has acted for or on behalf of Cuba on or after the effective date, or is otherwise a "specially designated national."[30]

It may be that the individual has sought refuge in a third country. If he was within the "authorized trade territory"[31] (what used to be referred to as the "Free World") as of the effective date, he may be an unblocked

national, unless he has been in, or has acted for, the designated foreign country at any time on or since the effective date.[32] This rule applies to both the Foreign Assets and Cuban Assets Control Regulations.

For an individual who does not qualify for a license, but who is outside the designated country, some provisions license certain limited remittances to the individual from any blocked account in his or her name for living, travel, and personal expenses.[33] If these amounts are not sufficient, a specific license application, demonstrating in detail the necessary living expenses of the applicant, can be filed with the Office.

Another case that might arise is a blocked joint account in which one of the owners has emigrated to the United States, as an unblocked national, whereas the other is still a blocked national. Here, a specific license could be issued unblocking a portion or all of a blocked joint account where the nonblocked party claims beneficial ownership.[34] Documentary evidence is required to demonstrate the extent of the joint owner's interest if the account does not have a survivorship provision. If there are survivorship provisions, then a *pro rata* share is licensable without such documentation.

This rule for joint accounts applies to both the Foreign Assets and Cuban Assets Control Regulations. However, under the Cuban Assets Control Regulations, there are also special provisions concerning community property rights upon the death of a spouse who was a blocked national at the time of his or her death. These provisions are examined below in the discussion of estate problems under the regulations.[35]

TREATMENT OF ASSETS OF BUSINESS ENTITIES IN WHICH REFUGEES OR EXPATRIATES HAVE AN INTEREST

The rules for the treatment of blocked assets of business entities in which refugees or expatriates have an interest are virtually identical under the Foreign Assets and Cuban Assets Control Regulations. There are different rules for the three basic types of business entities: sole proprietorships, partnerships, and corporations. Other hybrid types of entities (for example, joint ventures and "limited companies") occur less frequently and are handled by analogy to those three prototypes. Each of the three is the subject of a statement of licensing policy; that is, a provision in the regulations setting forth the conditions under which a specific license would be granted.

In the case of sole proprietorships, the assets held in the name of a blocked sole proprietorship, less any obligations owed to persons in blocked countries, can be unblocked if the proprietor has emigrated from a designated country and has established residence in the United States or the "authorized trade territory."[36] Naturally, in cases of doubt the pur-

ported proprietor would have to demonstrate that his or her business is in fact a sole proprietorship.

In the case of partnerships, general or limited, the assets held in the name of a blocked partnership, less any obligations owed to persons in blocked countries, can be unblocked if all the general and limited partners have emigrated from the designated country and have established residence in the United States or the "authorized trade territory."[37] Again, in cases of doubt the applicant must demonstrate that the entity in question is in fact a partnership. Furthermore, if not all the partners are known to have emigrated, a license can be obtained unblocking the *pro rata* shares of the partners who have emigrated.[38]

The case of the blocked corporation has raised most of the serious litigation concerning Treasury licensing policy with respect to business entities. Present policy is not to unblock the assets of blocked corporations, regardless of the present whereabouts of the shareholders and other interested parties. The underlying reason for this is that the corporation is a separate juridical entity whose own assets are blocked by the regulations. There always remains the possibility of claims by the blocked country on behalf of such corporations at the time of settlement negotiations.

Nevertheless, the rule is a hard one from the point of view of refugee shareholders, and it has been the source of some controversy.

The key case on this issue is *Neilsen v. Secretary of the Treasury.*[39] There the plaintiffs, Cuban expatriates, owned 75 percent of the shares of a Cuban corporation which the Cuban Government had seized, and eventually closed, approximately six months after the effective date of the Cuban Assets Control Regulations. OFAC considered obligations owed to the corporation by the U.S. Navy (for work performed after the effective date but before the seizure) as blocked. Plaintiffs sued for unblocking, and argued that the Cuban Government did not have an interest in these corporate assets because the company had been confiscated. Plaintiffs contended that this fact would justify the court in "piercing the corporate veil" and treating property held in the name of the corporation as belonging to the shareholders. In rejecting the argument that expropriation terminates the interest of the designated foreign government in the company's U.S. assets for blocking purposes, the court noted:

> A nation may have scope to effectuate its policies concerning assets within its jurisdiction without being bound by technical considerations of corporate entity and corporate domicile. But certainly it is at least presumptively acting reasonably, and without being subject to the charge of arbitrary or tyrannical action, if it assumes that assets owned by a Cuban corporation are indeed assets in which there is a Cuban national interest.
>
> The reasonableness of this approach is heightened by the possibility, perhaps

> the likelihood, that the foreign country will assert an interest in the assets of corporations organized under its laws. . . .
>
> It is not unreasonable for the American authorities to treat the property of a Cuban corporation as a matter of Cuban interest and concern, when this and future Cuban governments are likely, with some support in fundamental legal principles, to assert such an interest.[40]

This view has recently been endorsed by the Northern District of California in *Tran Qui Than v. Blumenthal,*[41] a 1979 decision. There the plaintiff, a refugee and shareholder in one of the largest commercial banks in South Vietnam before its fall, claimed personally, or by assignment, the majority of the bank's stock. He sought to obtain funds owed by the U.S. Government to the bank; Treasury considered the funds blocked and denied a license. Plaintiff then sought a declaration that the Foreign Assets Control Regulations were inapplicable to these funds.

Plaintiff argued that *Neilsen* could be distinguished because here the bank had been expropriated and ceased to function before the effective date of the Regulations, so that there was no extant interest in the U.S.-situs assets other than those of plaintiff. The court rejected this view:

> A government with the power to expropriate also has the power to assert a claim as the successor to an expropriated bank's foreign-based assets. It is clear, therefore, that the mere fact of expropriation by Vietnam prior to the effective date does not distinguish this case from *Neilsen.*[42]

Following *Neilsen,* the court in *Tran Qui Than* held that the blocking of the bank's assets was within Treasury's authority, and that the refusal to license did not violate the plaintiff's rights to due process or equal protection.[43] This case is currently on appeal to the Ninth Circuit.

In the *Neilsen* case, the court considered the argument that this approach to blocked corporate assets conflicts with the results in *Kaufman v. Societe Internationale Pour Participations Industrielles et Commerciales, S.A.*[44] and *Taterka v. Brownell,*[45] two cases of World War II vintage, involving suits under section 9(a) of the Trading with the Enemy Act.[46] This section allows nonenemy claimants to recover their interests in "vested" property; that is, property which has been expropriated by the U.S. Government because of the interests of enemy nationals in the property.

Kaufman involved a suit brought by a Swiss corporation against the U.S. Government under section 9(a) for the return of corporate assets which the government had blocked and subsequently vested because the corporation appeared to be enemy-controlled. The Supreme Court held that the U.S. minority shareholders of the corporation had standing to intervene in the suit, since the rights of such nonenemy shareholders might not be ade-

quately protected by the corporate plaintiff, yet any final judgment in the case would bind them. In allowing intervention, the Supreme Court stated that

> when the [U.S.] Government seizes assets of a corporation organized under the laws of a neutral country, the rights of innocent stockholders to an interest in the assets . . . must be fully protected. This holding is not based on any technical concept of derivative rights appropriate to the law of corporations. It is based on the [Trading With the Enemy] Act which enables one not an enemy . . . to recover any interest, right or title which he has in the property vested. The innocent stockholder may not have title to corporate assets, but he does have an interest which Congress has indicated should not be confiscated merely because some others who have like interests are enemies.[47]

The *Kaufman* rule was extended to innocent stockholders of enemy corporations in *Taterka.*[48] These and similar cases were cited by plaintiffs in both *Neilsen* and *Tran Qui Than,* and in each the court specifically rejected the argument that the *Kaufman* rule was authority for the release of corporate assets which had been blocked by the U.S. Government but title to which had not been vested in the name of the U.S. Government. On the question whether the *Kaufman* rule was a precedent in the unblocking context, the *Neilsen* court stated:

> Congress permitted [vesting] when the ownership and control of what was in form a neutral corporation was in substance tainted by enemy interests. The [*Kaufman*] Court construed the relevant provisions of the Trading With the Enemy Act [concerning vesting] as permitting the government to pierce the corporate veil, because of the interest of enemy stockholders, but . . . in that event the government must protect the position of innocent stockholders. . . .
>
> We have no occasion to consider whether or not the ruling of *Taterka* is correct. Assuming that it is, it stands at most as an interpretation of the provisions of sections 2 and 9(a) of the Trading With the Enemy Act as applicable to *assets that were not only blocked . . . but were vested* . . . .
>
> If the blocking of Cuban assets . . . is followed by vesting action, the vesting need not be under Section 5(b) of [the Trading With the Enemy] Act. . . .
>
> And perhaps Congress will not adopt the same companion provisions when and if it passes a statute authorizing the vesting of Cuban assets.[49]

In one respect the rule on assets of blocked corporations has been ameliorated. The assets of blocked corporations wholly or substantially owned by U.S. citizens on the effective date of the regulations can be

unblocked by specific license. This is an explicitly stated policy in the Cuban Assets Control Regulations,[50] and the same policy is followed in administering the Foreign Assets Control Regulations.

This policy was developed in response to hearings on amendments to the International Claims Settlement Act.[51] A Senate Foreign Relations Committee Report[52] and a House Report[53] expressed disapproval of any practice which would be "tantamount to using the property of one U.S. citizen to pay the claim of another U.S. citizen."[54] The House Report suggested

> that a thorough examination be made by the Department of the Treasury on a case-by-case basis to determine from the evidence and equities involved in each case the proper disposition of U.S. national owned blocked assets and that, where proper, it unblock U.S. privately owned assets.[55]

Hence, Congress had indicated that blocked assets which were indirectly those of U.S. citizens would not be used in any future claims settlement, but Congress made no similar finding as to corporate assets claimed by refugees. Responding to this suggestion of Congress, Treasury developed the policy of allowing for a case-by-case procedure to consider whether blocked corporate assets actually involve interests of U.S. stockholders. To date, however, no relief has been provided for nonblocked individuals who were not U.S. nationals as of the date the blocking took effect.

It is particularly suggestive that Congress recommended this change of treatment for certain types of blocked corporate assets in the context of its consideration of amendments to the International Claims Settlement Act. This Act authorizes the Foreign Claims Settlement Commission (now an agency of the Department of Justice) to adjudicate claims of U.S. nationals against certain specified countries, including, for example, Cuba and the People'e Republic of China.[56] Claimants who were aliens as of the date of loss are explicitly excluded from the claims adjudication process. Since they are also excluded from Congress' recommendation concerning blocked corporate assets, it is reasonable to assume that such assets could be used to satisfy U.S. claims pursuant to a claims settlement agreement negotiated at some future time. The policy reasons most blocked assets are held indefinitely, against the possibility that they may be involved in a claims settlement with the designated country, are explored in the last section of this article.

TREATMENT OF ESTATE PROBLEMS

If a blocking program lasts long enough, as most of them have, new issues

arise in the area of estate law. Assume that Mr. *A*'s father remains in the blocked country from which Mr. *A* has already emigrated. The father has a bank account or other property within the United States, but Mr. *A* finds that he cannot draw on the account because it is blocked under the regulations. The differences between the United States and the blocked country continue unresolved, and in the interim, *A*'s father dies in the blocked country. Are his blocked assets freed at that point to pass to his next of kin, Mr. *A* and his nephew *X*, who happen to be in the United States? The short answer is "no." The transfer of property to them, by intestate succession or otherwise, is still a "transfer" involving property in which a blocked national has had an interest since the effective date. Hence, no transfer, by operation of law or otherwise, can occur without a license.

The licensing policies in the area of estates are complicated. Though the policies under the Foreign Assets and Cuban Assets Control Regulations are again quite similar, there are significant differences between them because the Cuban Regulations include provisions dealing with spousal community property rights.

There are certain provisions which these two sets of regulations share. First, a general license authorizes the minimal ministerial transactions necessary to administer a decedent's estate.[57] (For example, Mr. *A* could be appointed administrator of his father's estate.) Furthermore, a general license permits any U.S. bank or trust company to make distributions under an estate or trust of a non-blocked decedent, provided that any distributions to a blocked national are made into a blocked account in a domestic bank in the name of the blocked national.[58] Hence, if Mr. *A*, Mr. *X*, and *X*'s sister Mrs. *Y* (who is still blocked) are all beneficiaries under a trust established by *Z*, a U.S. national who is *A*'s uncle, distributions may be freely made to *A* and *X*, but the distributions to *Y* must be made into a blocked account in a U.S. bank.

Another general license permits transfers by operation of laws governing, for example, dower, curtesy or community property where the end result is the creation of a blocked interest which remains subject to U.S. jurisdiction.[59] As a general rule, however, no such transfers are permitted where the effect would be to transfer assets out of blocked status.

The Foreign Assets and Cuban Assets Control Regulations also share certain ground rules pertaining to the treatment of blocked life insurance policies. Transactions to maintain or service blocked life insurance policies are authorized by general license, under certain conditions.[60] Payment of the proceeds of blocked life insurance policies can be made to nonblocked individuals by specific license only after deduction of an amount equal to the cash surrender value of the policy. (The cash surrender value remains blocked as representing the absolute minimum amount readily available to the deceased up until the time of his death.) However, where the insurance

policy provides that the proceeds are to be paid to the estate of the deceased blocked national, rather than to named beneficiaries, the entire amount remains blocked in the name of the estate of the deceased.

The treatment of blocked life insurance policies does reveal some divergence between the Foreign Assets and Cuban Assets Control Regulations. Under the Cuban Regulations, if a nonblocked surviving spouse is a beneficiary of the policy, the spouse may also be authorized, by specific license, to receive up to 50 percent of the cash surrender value of the policy.[61]

This exception, which attempts to take into consideration the spouse's personal interest in community property under the civil law principles governing in Cuba, is in accord with a broader licensing policy governing blocked bank accounts of deceased blocked Cuban nationals. As mentioned above, specific licenses are granted unblocking up to 50 percent of such accounts in favor of the nonblocked surviving spouse who claims a beneficial interest in all or part of the account. Documentary proof of the beneficial interest is not required for this 50 percent share.

Joint accounts are given similar treatment under the Cuban Regulations. Where a bank account is held jointly in the names of husband and wife, a surviving spouse may receive 50 percent under the joint accounts licensing policy, discussed previously, or 50 percent under the community property licensing policy, but not both. Independent documentary proof of a beneficial interest would be required for any amount in excess of 50 percent of the account.[62]

The licensing provisions with respect to blocked estates have engendered some litigation, and by and large the courts have upheld them. In 1975, *Real v. Simon*[63] challenged the policy with respect to blocked estates. The Fifth Circuit held that the Regulations could not block the estate of a deceased Cuban national if all the heirs were unblocked nationals.[64] In reaching its decision, the court relied on the Senate's recommendation, referred to above,[65] that assets of one group of U.S. nationals not be used to satisfy the claims of others. The court reasoned that blocking an estate in which all individual parties in interest are unblocked would run contrary to the rationale the Congress suggested with respect to corporate assets.

This case would seem to be a rather clear victory for refugees seeking to recover blocked assets in which they have an interest. The court's reasoning is, however, overwrought. The Second Circuit disapproved *Real* in *Richardson v. Simon,*[66] and even within the Fifth Circuit itself, the Southern District of Florida in *Ferrera v. United States*[67] strictly limited *Real* to its specific facts, holding that, if any of the beneficiaries of a blocked estate remained a blocked national, the estate assets also remained blocked.

In *Richardson,* the Second Circuit upheld Treasury's decision to bar the transfer of a deceased Cuban national's property to an American citizen by

intestate succession. The court found that the congressional reports relied on in *Real* provided little support for the decision. It agreed with the district court which had found that the recommendation contained in the Senate report "referred only to those assets in the United States which were beneficially owned by Americans on or before . . . the date the freeze went into effect."[68] In both *Real* and *Richardson,* on the effective date of the regulations the assets were owned by blocked Cuban nationals, later deceased.

The *Real* court also erroneously identified the policy purposes served by the regulations, by limiting them to one: the need to retain blocked assets for possible use in satisfaction of U.S. claims against Cuba. It believed that only this purpose could be advanced in support of Treasury blocking action. On this basis, it concluded that that purpose was not properly served by the blocking of the estate assets in question. The *Richardson* court noted to the contrary that when the government blocked the assets of a Cuban national they became available not only for direct use in satisfying U.S. claims, but also as a bargaining chip in any future negotiations with the designated country. The issue of how to treat such assets in light of the possibility of future, as yet unformulated, negotiations was in the first instance properly a question for the executive and legislative branches.[69]

LITIGATION INVOLVING BLOCKED ASSETS

Perhaps the most obvious way in which a refugee or expatriate can make good his or her claims against his or her former homeland is to bring suit in the courts of the country of refuge. It is beyond the purview of this paper to discuss the more typical problems which face such a litigant, for instance, the problems of establishing jurisdiction in a convenient forum, overcoming act of state and sovereign immunity defenses, and obtaining evidence. What is at issue here is the extent to which the blocking of the defendant state's assets limits the ability of a successful plaintiff to recover out of such assets.

The basic blocking provision in each set of regulations prohibits, among other things, "transfers" involving property in which a designated country or its nationals have any interest. The term "transfer" includes by definition "the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment."[70] Unless otherwise licensed, "any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void."[71]

The regulations include, however, a general license authorizing judicial proceedings up to, but not including, entry of a judgment or order of

similar nature or effect.[72] This general license includes pre-judgment attachments, but transfer of the attached assets to the marshal, sheriff, or similar functionary, and payment into court are not authorized by the license. At judgment stage, an application for a specific license would be necessary. Hence, direct recovery by refugees and expatriates out of blocked assets of their former homeland is subject to the licensing policies of the regulations.

Under the Foreign Assets and Cuban Assets Control Regulations, specific licenses have on occasion been issued for entry of non-self-executing judgments, but no execution under the judgment against blocked property has been authorized.[73] To allow execution would, in effect, prejudge the outcome of claims adjudication and settlement negotiations yet to take place. If executions were licensed, claimants with judgments would be allowed to recover 100 percent of their claims, while others might receive only *pro rata* shares of their claims from any fund created by a claims settlement agreement.

Furthermore, in the case of claims by refugees and expatriates, execution under a license might be tantamount to espousing the claims of individuals who were not U.S. nationals at the time of loss. This result would run counter to past U.S. practice under claims adjudication programs under the International Claims Settlement Act,[74] as mentioned above (and thus under any future adjudication program following these historical models[75]). At the very least such claims would be questionable for purposes of diplomatic protection as a matter of international law.[76] At least in theory, these principles of international law would govern any future claims negotiations with the foreign country in question, and it may therefore be inappropriate for the U.S. Government to deplete significantly the pool of blocked assets available for claims settlement negotiations in favor of individuals whose claims the U.S. Government could not espouse.

On several occasions the courts have upheld Treasury's assertion of authority over judicial proceedings involving blocked assets. Considering the prohibitions of the Foreign Funds Control Regulations, for example, the Supreme Court held in *Propper v. Clark*[77] that judicial action purporting to transfer title to property was invalid where the property was already blocked. In *Propper* the Court invalidated a transfer effected by the judicial appointment of a permanent receiver of blocked Austrian assets.

Similarly, in *Orvis v. Brownell,*[78] the Court held that a state attachment order created no interest in blocked property that the claimant could assert against the Alien Property Custodian who had subsequently vested the attached property. In *Orvis* the Court upheld the power of the president to prohibit the creation or termination of interests in blocked property. The Court rejected a narrower interpretation of the Trading With the Enemy

Act which would have limited the prohibition to actual, physical transfers of assets.

This view was followed in *Chase Manhattan Bank v. United China Syndicate, Ltd.,*[79] a 1960 case in which the Southern District of New York ruled, in light of the prohibitions in the Foreign Assets Control Regulations, that "this Court may not direct the entry of any judgment at the present time in the absence of a license permitting such entry of judgment."[80]

One case concerning the Foreign Assets Control Regulations has disputed this conclusion. *Vishipco v. Chase Manhattan Bank,*[81] an unreported 1978 decision of the Southern District of New York, involved a demand by Vietnamese expatriates for blocked assets held by Chase Manhattan. Judge Carter held that the Regulations did not constitute a bar to entry of judgment in cases involving blocked assets. This decision relied heavily on the court's interpretation of the Supreme Court's 1964 decision in *Banco Nacional de Cuba v. Sabbatino,*[82] which did not directly involve a question of the validity of the Regulations. In response to an inquiry from the solicitor general, a letter from the acting director of OFAC[83] stated that the Office had no objection to the continuation of the proceedings in *Sabbatino.* In *Vishipco,* Judge Carter argued that this position supported his conclusion that the Regulations were never intended to bar entry of judgment.

To the contrary, the government's position is that *Sabbatino* is consistent with current practice under the Regulations. The United States Government was not a party to the *Vishipco* case, and the court's decision was reached without benefit of any argument from the government concerning the proper interpretation of the *Sabbatino* case. In fact, as other Treasury correspondence to counsel in *Sabbatino* would have indicated to the court, OFAC "regard[ed] [the] letter . . . to the Solicitor General as constituting a license authorizing continuance of the litigation and entry of judgment both in the Supreme Court and in subsequent proceedings by the District Court."[84]

Treasury's policy that a license is required to enter judgment in judicial proceedings involving blocked property has been consistently applied throughout the history of the blocking program. Yet the *Vishipco* court noted that the government's *amicus* brief in *Sabbatino* stated that "the Regulations impose no barrier to the continuation of the litigation in this case nor the entry of a judgment for petitioner."[85] The simple explanation of this statement is that the Regulations posed no barrier because the proceedings and entry of judgment were licensed.

Had the government presented its views in *Vishipico,* this fact would have been before the court. Another fact should have been obvious, however, even without the government's intervention. The district court initially decided *Sabbatino* on March 31, 1961,[86] and the Second Circuit affirmed on July 6, 1962.[87] No license for instituting the litigation or

entering judgment at those stages was necessary because Cuban assets were not blocked at that time. It was not until July 8, 1963, that the Cuban Assets Control Regulations were issued.[88] Hence, Judge Carter's unreported decision in *Vishipco* appears to have been based on a misinterpretation of the letter from the Office of Foreign Assets Control to the solicitor general in connection with *Sabbatino,* as well as a misunderstanding of the facts surrounding the litigation.[89]

CONCLUSION

What treatment, then, may refugees and expatriates expect in light of Treasury's blocking controls? Individually owned assets are automatically unblocked if the individuals were fortunate enough to emigrate before the blocking occurred. If emigration postdated the blocking, they may seek a specific license unblocking the assets.

Blocked assets of business entities owned by refugees and expatriates will be available to them by specific license, except in the case of corporate assets; these remain blocked. The situation is less favorable with respect to estate assets, though some relief is available in limited circumstances. Certainly, the chance of recovery from blocked assets in litigation is perhaps the bleakest prospect under the regulations.

The question, then, is why are the prospects so bleak? On other issues involving humanitarian considerations, the policy of the regulations has yielded hopeful results. For example, remittances from U.S. residents to close family relatives in blocked countries have been permitted, both for support and for emigration purposes.[90] Travel and exchange, which fosters contacts between separated families, have been authorized.[91] But where blocked assets are involved, the policy locks into place almost inflexibly.

The answer, satisfactory or not, is to be found in the policy purposes which have traditionally triggered blocking controls. These purposes are, by and large, at cross-purposes with efforts to relieve the situation of refugees and expatriates, perhaps necessarily so.

The controls obviously respond to a wide variety of foreign policy concerns and objectives. They have emerged over the entire World War II and postwar period. Hence, a variety of purposes lie behind these regulations, and the purposes of any given set of regulations may have shifted over time in terms of relative emphasis. However, five primary purposes can be identified which generally apply, to a greater or lesser extent, to all the regulations.

Historically, the earliest purpose behind the regulations, that is, behind the Foreign Funds Control Regulations at the time they were first issued,

was to prevent the conversion of the U.S. assets of foreign nationals through duress or extortion by officials of a hostile foreign government. This purpose dates to the period immediately prior to the entry of the United States into World War II. At that time, with the invasion of Norway and Denmark by Nazi Germany, there was considerable fear that officials of the occupying power might extort transfers of the U.S. property of nationals of those countries.[92]

As occupation by the Axis powers spread, and as the United States became directly involved in the war, other purposes emerged. There was an "economic warfare" cast to the prohibitions at this point, and a primary purpose of the regulations was to deny to hostile foreign governments and their nationals foreign exchange and access to U.S.-situs assets. This purpose had obvious application to the wartime situation, but it continues to be an important objective in present circumstances.[93]

Related to this purpose was the desire to effect the economic and political isolation of hostile foreign governments. This, too, has continued as a purpose of the current regulations,[94] although such isolation is more difficult to achieve in a world where there is no international consensus as to who is the so-called "enemy."

Another goal which has been stressed more in circumstances where active hostilities are not proceeding has been to retain a pool of blocked assets as a "bargaining chip" for any future negotiations with the designated foreign country.[95]

More specifically, there is a desire to secure a pool of blocked assets against the contingency that they may be used, directly or indirectly, in satisfying claims of U.S. nationals against the foreign government involved.[96]

As all these purposes suggest, the controls have not been formulated primarily with regard to, or directed against, individuals who become refugees or expatriates. Indeed, only the first purpose bears any easily identifiable relationship to the refugee problem. The prevention of conversion of assets under duress may in fact redound to the eventual benefit of an individual who becomes a refugee and who might then have a need for and access to his U.S. assets.

However, aside from this factual connection with refugees, as a conceptual matter, in terms of the broad U.S. foreign policy objectives primarily served by these controls, the impact on individual refugees or expatriates with interests in blocked property is incidental. Still, it would be disingenuous to deny that the impact of these controls as a practical matter can be acute and serious. If the blocking of assets of a designated country extends to the assets of its nationals, then, in the absence of provisions for unblocking those assets by license, blocking can create serious problems for the refugee who has an interest in blocked property. Nevertheless,

these controls do contain provisions which have the effect, in some limited instances, of minimizing the impact on some refugees through general and specific licenses.

Still, the overriding foreign policy stance here dictates caution and circumspection in dealing with blocked assets. Future contingencies, particularly with respect to the shape of a claims settlement at some undetermined time in the future, have traditionally counselled maintenance of the status quo with respect to blocked assets. On the other hand, humanitarian and other similar concerns may dictate licensing in many instances. The controls described in this article are an example of an attempt, perhaps a halting attempt, by the U.S. Government to give appropriate weight to these conflicting policy objectives and values. The balance of factors may seem precarious, but, as the Supreme Court observed in a somewhat different context:

> [I]f, in the maintenance of our international relations, . . . perhaps serious embarrassment . . . is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved.[97]

It is not an easy duty, nor a happy choice, to balance the needs of national interest against the impact on individuals caught, often innocently, in the confrontation between two nations.

NOTES

[1] 50 U.S.C. app. §§ 1-39, 41-44 (1976). Section 5(b) of the Act was amended to be applicable in the future only during times of war, not during periods of national emergency declared by the president. 50 U.S.C. app. § 5(b) (Supp. III 1979). However, the use of the present peacetime emergency authorities with respect to certain countries was preserved until September 14, 1978. Amendments to the Trading With the Enemy Act, Pub. L. No. 95-223, § 101(b), 91 Stat. 1625 (1977). Section 101(b) also provided that the exercise of these authorities could be extended for successive one-year periods upon the president's determination that the exercise of the authorities for another year would be in the national interest. To date, the president has made three such determinations, the most recent on September 8, 1980. *See* 45 Fed. Reg. 59,549 (1980).

[2] 31 C.F.R. Part 500 (1980).

[3] The term "effective date" as used in the Foreign Assets Control Regulations with respect to each of the countries mentioned in the text is identified in Part I of the Schedule to 31 C.F.R. § 500.201 (1980), as follows:

1. North Korea, *i.e.*, Korea north of the 38th parallel of north latitude: December 17, 1950.
2. Cambodia: April 17, 1975.

3. North Viet-Nam, *i.e.*, Viet-Nam north of the 17th parallel of north latitude: May 5, 1964.
4. South Viet-Nam, *i.e.*, Viet-Nam south of the 17th parallel of north latitude: April 30, 1975 at 12:00 p.m. e.d.t.

[4] Proclamation No. 2914, 15 Fed. Reg. 9029 (1950).

[5] *See* 36 Fed. Reg. 8584, 11,441 (1971), lifting all controls with respect to the People's Republic of China except for the continued blocking of assets blocked as of May 6, 1971.

[6] 31 C.F.R. §§ 500.201, .204, .206, .328, .557, .558, .559 (1980).

[7] 31 C.F.R. § 500.201(b) (1980). This provision reads in pertinent part as follows:

(b) All of the following transactions are prohibited, . . . if such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

[8] 31 C.F.R. § 500.310 (1980) reads in part as follows:

The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. . . .

[9] 31 C.F.R. § 500.311 (1980) reads in part as follows: "[T]he terms 'property' and 'property interest' or 'property interests' shall include . . . any . . . property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent."

[10] 31 C.F.R. § 500.312 (1980) reads as follows: "The term 'interest' when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect."

[11] *See* United States v. Quong, 303 F.2d 499, 503 (6th Cir. 1962), *cert. denied*, 371 U.S. 863 (1962); United States v. Broverman, 180 F. Supp. 631, 636 (S.D.N.Y. 1959).

[12] *See* Cheng Yih-Chun v. Federal Reserve Bank of New York, 442 F.2d 460 (2d Cir. 1971).

[13] *See* Welch v. Kennedy, 319 F. Supp. 945, 946-47 (D.D.C. 1970).

[14] *See, e.g., Emergency Controls on International Economic Transactions: Hearings on H.R. 1560 and H.R. 2382 Before the Subcomm. on International Economic Policy and Trade of the House Comm. on International Relations*, 95th Cong., 1st Sess. 103-20 (1977)(statement of Fred C. Bergsten, Assistant Secretary for International Affairs, Department of the Treasury).

[15] 31 C.F.R. Part 515 (1980).

[16] *See, e.g.*, text at notes 61-62 *infra*.

[17] 31 C.F.R. Part 520 (1980).

[18] *See generally* U.S. Treasury Dep't, CENSUS OF FOREIGN OWNED ASSETS IN THE UNITED STATES (1945).

[19] 31 C.F.R. Part 535 (1980). It should be noted that, effective January 19, 1981, most of the trade and financial sanctions against Iran were lifted pursuant to Exec. Order No. 12,282, 46 Fed. Reg. 7925 (1981). *See* 46 Fed. Reg. 14,330, 14,337 (1981) (revoking and removing 31 C.F.R. §§ 535, 204, .206, .207, and .209, and related definitional, interpretive, and licensing provisions).

[20] 50 U.S.C. §§ 1701-1706 (Supp. III 1979).

[21] *See* text at pp. 401-403.

[22] *See* text at pp. 403-407.

[23] Former § 535.206(a)(4) (1980) did prohibit certain transactions involving private Iranian

nationals, but the prohibition did not constitute a blocking of private assets. Indeed, since the provision only barred direct and indirect transfers to persons in Iran, refugees would be unaffected even by this prohibition. It should be noted, however, that, pursuant to Exec. Order No. 12,284, 46 Fed. Reg. 7929 (1981), the U.S. property and assets of the estate of the former Shah of Iran and close relatives of the former Shah are blocked. *See* 46 Fed. Reg. 14,330 (1981) (to be codified in 31 C.F.R. § 535.217).

[24] In the Foreign Assets Control Regulations, the basic prohibition is directed against "any designated foreign country, or any national thereof." 31 C.F.R. § 500.201 (1980). This expression is translated into the term of art "designated national," defined in § 500.305 to include "any country designated in § 500.201 and any national thereof including any person who is a specially designated national." The term "specially designated national" is defined in § 500.306 to include persons determined by the secretary of the Treasury to be a specially designated national, persons acting on behalf of the government or authorities of any designated foreign country, and any organization, corporate or otherwise, owned or controlled by such a government or authorities. The use of this term "specially designated national" is of particular importance in the licensing area where, even if a general license is intended to apply to "designated nationals" the class of specially designated nationals may be explicity read out of the authorization. *See, e.g.*, 31 C.F.R. § 500.506(b) (1980).

[25] *See* 31 C.F.R. §§ 500.302(a)(1), .305 (1980).

[26] 31 C.F.R. §§ 500.305, .306(a)(2) (1980). *See also* note 21 *supra.*

[27] For definitions of the terms "license," "general license," and "specific license," *see* 31 C.F.R. §§ 500.316, .317, and .318 (1980), respectively.

[28] 31 C.F.R. §§ 500.505(a) (1980). However, since March 1977, travel to embargoed areas has been authorized by general license, and persons traveling to these areas after March 18, 1977 are not considered blocked nationals solely because of their presence in a designated country during such travel. 31 C.F.R. §§ 500.563(c) (1980). *See also* 31 C.F.R. § 515.560(c) (1980).

[29] 31 C.F.R. § 500.505(b) (1980) is a general license which licenses as an unblocked national "any individual in the United States who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act of 1952 . . . by the Attorney General" with certain exceptions. Although the language is out of date and does not take into account the situation of an asylee or similar refugee, in practice the Office of Foreign Assets Control has been flexible in interpreting the intention of the provision to include such individuals. This result is sometimes accomplished by specific license or informal interpretation of the above quoted provision.

[30] 31 C.F.R. § 515.505. *See also* note 24 *supra.*

[31] The term is defined in 31 C.F.R. §§ 500.322, 515.322 (1980).

[32] 31 C.F.R. §§ 500.506, 515.506 (1980).

[33] 31 C.F.R. §§ 500.518, 515.518 (1980).

[34] 31 C.F.R. §§ 500.556, 515.551 (1980).

[35] *See* text at notes 57–69.

[36] 31 C.F.R. §§ 500.559, 515.558 (1980).

[37] 31 C.F.R. §§ 500.558(a), 515.557(a) (1980).

[38] 31 C.F.R. §§ 500.558(b), 515.557(b) (1980).

[39] 424 F.2d 833 (D.C. Cir. 1970).

[40] 424 F.2d at 842.

[41] 469 F. Supp. 1202 (N.D. Cal. 1979).

[42] 469 F. Supp. at 1209.

[43] 469 F. Supp. at 1210-11.

[44] 343 U.S. 156 (1952).

[45] 117 F. Supp. 506 (S.D.N.Y. 1953).

[46] 50 U.S.C. app. § 9(a) (1976) reads in part as follows: "Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been . . . seized by [the Alien Property Custodian] . . . may file with the said custodian a notice of his claim under oath. . . ."

[47] 343 U.S. at 159-60.

[48] 117 F. Supp. at 506.

[49] 424 F.2d at 842-43 (emphasis added; citations omitted). *See also* Tran Qui Than v. Blumenthal, 469 F. Supp. at 1210-11.

[50] 31 C.F.R. § 515.555 (1980).

[51] An Act to Amend Title V of the International Claims Settlement Act of 1949, Pub. L. No. 89-262, 79 Stat. 988 (1965).

[52] S. REP. No. 701, 89th Cong., 1st Sess., *reprinted in* [1965] U.S. CODE CONG. & AD. NEWS 3581.

[53] H.R. REP. No. 706, 89th Cong., 1st Sess. (1965).

[54] S. REP. No. 701, *supra* note 52, at 5, *reprinted in* [1965] U.S. CODE CONG. & AD. NEWS, at 3585.

[55] H. R. REP. No. 706, *supra* note 53, at 7.

[56] *See, e.g.*, 22 U.S.C. §§ 1643–1643k (1976).

[57] 31 C.F.R. §§ 500.523(a), 515.523(a) (1980). Furthermore, if the decedent was a blocked national solely by reason of his or her presence in the blocked country since the pertinent effective date, but was not otherwise a national at the time of his death, and the gross value of the U.S.-situs assets does not exceed $5,000, all other substantive transactions involving the estate are also authorized. 31 C.F.R. §§ 500.523(b), 515.523(b) (1980). This would include distribution of estate proceeds to nonblocked beneficiaries, but distributions to blocked nationals are themselves blocked. 31 C.F.R. §§ 500.523(c), 515.523(c) (1980).

[58] 31 C.F.R. §§ 500.524, 515.524 (1980).

[59] 31 C.F.R. §§ 500.525, 515.525 (1980).

[60] 31 C.F.R. §§ 500.526, 515.526(a) (1980).

[61] 31 C.F.R. § 515.552(a)(3) (1980). *Cf.* 31 C.F.R. § 500.557.

[62] 31 C.F.R. § 515.551(a)(3) (1980). *Cf.* 31 C.F.R. § 500.556.

[63] 510 F.2d 557 (5th Cir. 1975).

[64] *See id.* at 562-64.

[65] *See* text at notes 51-55 *supra.*

[66] 560 F.2d 500 (2d Cir. 1977), *appeal dismissed,* 435 U.S. 939 (1978).

[67] 424 F. Supp. 888 (S.D. Fla. 1976).

[68] Richardson v. Simon, 420 F. Supp. 916, 919 (E.D.N.Y. 1976) *aff'd,* 560 F.2d 500 (2d Cir. 1977).

[69] 560 F.2d at 505.

[70] 31 C.F.R. §§ 500.310, 515.310, 535.310 (1980).

[71] 31 C.F.R. §§ 500.203(e), 515.203(e), 535.203(e) (1980).

[72] 31 C.F.R. §§ 500.504, 515.504, 535.504 (1980).

[73] Under the Iranian Assets Control Regulations, specific licenses have not been granted even for entry of judgments. This practice is in accord with suggestions of interest submitted by the Justice Department urging stays of all judicial proceedings during the pendency of the Iranian crisis. *See, e.g.*, American International Group v. Islamic Republic of Iran, No. 80-1779 (D.C. Cir. September 26, 1980); "United States Memorandum in Support of its Motion for Clarification," *filed* October 27, 1980, in National Airmotive Corporation v. The Government and State of Iran, Civil Action No. 80-0711 (D.D.C.). As these matters are still *sub judice,* they are not addressed in this article. Furthermore, pursuant to Exec. Order No. 12283, 46 Fed. Reg. 7927 (1981), prosecution of certain claims against Iran are barred, and previously instituted judicial proceedings based upon such claims are terminated. *See* 46 Fed. Rep. 14,330 (1981)

(to be codified in 31 C.F.R. § 535.216). In any event, the Iranian cases generally do not involve the interests of refugees, which are of course the central concern of this article.

74 *See, e.g.,* claims adjudication programs affording a forum only to U.S. nationals as certified claimants, as set forth in 22 U.S.C. §§ 1623(a), 1642(1), 1642c, 1643, 1643a(1), 1644, 1644a(1) (1976).

75 *See, e.g.,* S. 1833, 96th Cong., 1st Sess., §§ 700, 701(1) (1979); H.R. 2200, 96th Cong., 1st Sess., §§ 700, 701(1) (1979), two bills to amend the International Claims Settlement Act of 1949 to provide for losses incurred by U.S. nationals in Vietnam. These identical provisions concern only claims by U.S. nationals as certified claimants.

76 *See, e.g.,* The Nottebohm Case (Lichtenstein v. Guatemala) (Second Phase), [1955] I.C.J. 4. *See generally,* Malloy, *Objections to Adjudication in Contentious Cases before the International Court of Justice,* 5 BROOKLYN J. INT'L L. 262, 316-19 (1979); Kunz, *The Nottebohm Judgment (Second Phase),* 54 AM. J. INT'L L. 536 (1960). *See also,* The Barcelona Traction Case (Second Phase), [1970] I.C.J. 3; Malloy, *supra,* at 324-26; Briggs, *Barcelona Traction: The Jus Standi of Belgium,* 65 AM. J. INT'L L. 327 (1971).

77 337 U.S. 472 (1949).

78 345 U.S. 183 (1953).

79 180 F. Supp. 848 (S.D.N.Y. 1960).

80 *Id.* at 850.

81 77 Civ. 1251 (RLC) (S.D.N.Y. 1978).

82 376 U.S. 398 (1964).

83 Letter from Stanley L. Sommerfield, Acting Director, Office of Foreign Assets Control, to Archibald Cox, Solicitor General, August 16, 1963, *reprinted in* Appendix, Brief for the United States as Amicus Curiae, (filed September 10, 1963) at 48, Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964).

84 Letter to all counsel from the Director, Office of Foreign Assets Control, June 10, 1964. (Attached as Appendix A to the U.S. Government's "Memorandum in Support of its Motion for Clarification" in National Airmotive Corporation v. The Government and State of Iran.)

85 Brief for the United States as Amicus Curiae, *supra* note 83, at 33 n.31.

86 *See* 193 F. Supp. 375 (S.D.N.Y. 1961), *aff'd* 307 F.2d 845 (2d Cir. 1975), *rev'd* 376 U.S. 398 (1964).

87 *See* 307 F.2d 845 (2d Cir. 1962), *rev'd* 376 U.S. 398 (1964).

88 *See* 28 Fed. Reg. 6975-85 (1963) (codified in 31 C.F.R. Part 515).

89 Relying in part on *Vishipco,* on October 16, 1980, the D.C. district court in *dicta* in *National Airmotive* questioned the president's authority to bar judicial proceedings involving blocked property under his emergency powers. The government has moved for a clarification of the court's order, since this *dicta* appears to be based upon a serious misunderstanding of the government's position, particularly insofar as the order relies upon *Vishipco* for authority. *See* "Memorandum," *supra* note 73. To the contrary, in a November 5, 1980, Memorandum and Order in New England Merchants National Bank v. Iran Power Generation and Transmission Company, 79 Civ. 6380 (KTD) (S.D.N.Y. 1980), Judge Duffy expressed the view that:

> The situation whereby the President invoked his extraordinary powers under the International Emergency Economic Powers Act . . . in effect, suspended all litigation involving the frozen Iranian assets. These lawsuits are permitted by a general license issued by the executive . . . . That license can be suspended by the executive acting alone. Such a suspension would effectively stay all of this litigation.

90 *See* 31 C.F.R. §§ 500.521, .565, 515.521, .563 (1980).

91 *See* 31 C.F.R. §§ 500.563, 515.560, .564 (1980). However, the travel authorizations contained in the last two cited sections were not intended to authorize the transactions involved in the wholesale emigration of Cuban nationals during the so-called "Freedom Flotilla" episode which occurred in mid-1980. Transactions incident to the travel to the

United States of Cuban nationals traveling without a visa issued by the Department of State—a situation which was often the case during the "Freedom Flotilla" exodus—are not authorized by § 515.564. 31 C.F.R. § 515.415(b) (1980). Furthermore, transactions by persons subject to U.S. jurisdiction in connection with the transportation of such Cuban nationals—such as incurring traveling expenses to Cuba to pick up "Freedom Flotilla" refugees—are not authorized by § 515.560, which authorizes "transactions ordinarily incident to travel to and from Cuba" by U.S. persons. *See* 31 C.F.R. § 515.415(a), (c) (1980).

92 *See, e.g.,* Exec. Order No. 8389, 5 Fed. Reg. 1400 (1940); Reeves, *The Control of Foreign Funds by the United States Treasury,* 11 LAW & CONTEMP. PROB. 17, 26 (1945).

93 *E.g.,* Richardson v. Simon, 560 F.2d at 505; Sardino v. Federal Reserve Bank of New York, 361 F.2d at 111-12; Sommerfield, *Treasury Regulations Affecting Trade with the Sino-Soviet Block and Cuba,* 19 BUS. LAW. 861, 862 (1964).

94 *E.g.,* Sommerfield, *supra* note 93.

95 *E.g.,* Richardson v. Simon, 560 F.2d at 505; Real v. Simon, 510 F.2d at 563; Sommerfield, *supra* note 93.

96 *E.g.,* Richardson v. Simon, 560 F.2d at 505; Sardino v. Federal Reserve Bank of New York, 361 F.2d at 112-13; Sommerfield, *supra* note 93.

97 United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936); *see also* Sardino, 361 F.2d at 110.